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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,324	11/20/2003	Justin E. McDonough	MBI-1136DIV1	1057

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EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/718,324

Applicant(s)

MCDONOUGH ET AL.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 8-10 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Adado (5,253,780).
3. Regarding claim 1, Adado discloses a drinking cup (12, Figures 6-7 and column 4, lines 3-6) with an elastomeric overmolding (14, Figures 6-7, abstract and column 4, lines 33-40).
4. Regarding claim 8, Adado discloses a cup made of polypropylene with an elastomeric overmolding of polyolefin foam material.
5. Regarding claims 9 and 10, the invention of Adado would inherently possess these capabilities.
6. Regarding claim 16, the examiner considers the phrase “bi-component molding” to constitute a product by process limitation that does not materially affect the structure which is disclosed by Adado.
7. Regarding claim 17, the examiner considers the phrase “fusion bond” to constitute a product by process limitation that does not materially affect the structure. Adado discloses that the overmolding (14) is attached to the body (column 4, lines 35-36).

8. Regarding claim 18, the examiner considers the phrase “two-shot injection molding” to constitute a product by process limitation that does not materially affect the structure which is disclosed by Adado.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado in view of Sheffler et al (Sheffler) (6,029,842).

11. Regarding claim 2, Adado discloses the drinking cup of claim 1 but does not teach that the overmolding completely covers the bottom of the body. Sheffler discloses a plastic container body (10, Figure 2) with an overmolding (12, column 3, lines 3-5) of an opaque plastic that completely covers the bottom of the body and adds strength and durability to the container (column 2, lines 10-13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an overmolding that completely covers the bottom of the body as disclosed by Sheffler in the drinking cup disclosed by Adado to add strength and durability to the drinking cup.

12. Regarding claim 3, Adado discloses the features recited in claim 3 (Figure 6).

13. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado and Sheffler et al as applied to claim 3 above, and further in view of Tunberg (4,548,349). The drinking cup of claim 3 is disclosed by Adado and Sheffler but they do not teach that the overmolding has ribs. Tunberg discloses an overmolding with a plurality of ribs formed by the surface (18) and grooves (19) extending circumferentially about the body to provide a roughened surface to improve gripping of the cup. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an overmolding with a plurality of ribs extending circumferentially about the body as disclosed by Tunberg in the drinking cup disclosed by Adado to provide a roughened surface to improve gripping of the cup.

14. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado as modified regarding claim 5 above in view of Hirata et al (4,818,575). The cup of claim 5 is disclosed but the use of longitudinal depressions in the body is not taught. Hirata et al discloses a molded multilayer container with longitudinal depressions (57, Figures 6 and 8) in the body of the container for gripping the container and the overmolding layer (3, Figure 3) covers the depressions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of longitudinal depressions in the body of the container gripping the container and the overmolding layer that covers the depressions as disclosed by Hirata et al in the drinking cup disclosed by in claim 5 for gripping the drinking cup.

15. Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adado in view of Holloway et al (5,201,893) and Heldingsfeld (5,545,707).

16. Adado discloses the drinking cup of claim 1 but does not teach that the body is made of clarified, translucent polypropylene. Holloway et al discloses a cup made of translucent clarified polypropylene, which is non-toxic to humans, relatively rigid and easily sterilizable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a cup body made of translucent clarified polypropylene as disclosed by Holloway et al in the drinking cup disclosed by Adado to provide a drinking cup that is non-toxic to humans, relatively rigid and easily sterilizable.

17. Adado also does not teach that the overmolding is an opaque thermoplastic elastomer. Heldingsfeld discloses thermoplastic polyurethane elastomers (TPU's) that are well known and have high-grade mechanical properties due to thermoplastic workability (column 1, lines 11-14). Heldingsfeld further discloses that opaque TPU's are more desirable because they may be readily processed to films while transparent TPU's are less suitable for this purpose. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of opaque thermoplastic polyurethane elastomers (TPU's) as disclosed by Holloway et al in the overmolding of the drinking cup disclosed by Adado because they are well known and have high-grade mechanical properties due to thermoplastic workability and may be readily processed to films.

18. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Adado in view of Goth (5,197,618). Adado discloses the drinking cup of claim 18 with an overmolding made from a thermoplastic elastomer (TPE) but does not teach that the

overmolding is fusion bonded to the body with a bond strength greater than the tensile strength of the overmolding material. Goth discloses a fusion bond of a liner with a heat seal polymer to a container and the fusion bond is stronger than the tensile strength of the polymer material so that a residue of the polymer material is left on the container if the liner is removed providing tamper evidence (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a fusion bond of a liner (overmolding) with a heat seal polymer to a container with the fusion bond stronger than the tensile strength of the polymer material as disclosed by Goth in the drinking cup disclosed by Adado so that a residue of the polymer material is left on the container if the liner is removed providing a tamper evidence.

19. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adado as modified in claim 18 in view of Holloway et al. The drinking cup of claim 18 is disclosed but Adado does not teach that the cup body is made from clarified polypropylene. Holloway et al discloses a cup made of clarified polypropylene as discussed in paragraph 16 above.

20. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adado as modified in claim 19 above in view of Wehnert, III (Wehnert) (4,815,628). The drinking cup of claim 19 is disclosed but Adado does not teach a durometer value for the overmolding. Wehnert discloses an overmolding (10, Figure 4) with a durometer in the range of 40 to 70 Shore A (column 1, lines 47-51) to provide a highly elastomeric material for tight fitting overmolding. It would have been obvious to one of ordinary skill


in the art at the time the invention was made to have incorporated the use an overmolding with a durometer in the range of 40 to 70 Shore A as disclosed by Wehnert in the drinking cup disclosed by Adado to provide a highly elastomeric material for tight fitting overmolding.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday and alternate Fridays from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lee Young
Supervisory Patent Examiner
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